

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

AVC NO _____ 06-023 _____

IN RE: EARTHtel, Inc.)
)
 Respondent.)

FILED

(32) JUN 01 2006

ASSURANCE OF VOLUNTARY COMPLIANCE

Doris Ann Scholler
CLERK OF THE
MARION CIRCUIT COURT

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General

Matt Light, and the Respondent, EARTHtel, Inc., enter into an Assurance of Voluntary
Compliance (Assurance), pursuant to Indiana Code §23-7-8-1 et seq.

Any violation of the terms of this Assurance constitutes prima facie evidence of a
deceptive act. This Assurance is entered into without any adjudication of any issue of fact or
law, and upon consent of the parties. This Assurance is not an admission of liability.

The parties agree:

1. Respondent is engaged in professional fundraising solicitations, with a principal place
of business at 2030 Franklin Street, Oakland, California 94612, and transacts business with
Indiana consumers.

2. Respondent is registered with the Consumer Protection Division of the Office of
Attorney General ("Division") as a professional solicitor and solicits donations from persons in
Indiana on behalf of charitable organizations.

3. The Division has jurisdiction to investigate the matters hereinafter described, pursuant
to the authority of Indiana Code § 4-6-9-4 and Indiana Code § 23-7-8-8.

4. The terms of this Assurance apply to and are binding upon Respondent, its
employees, agents, representatives, successors, and assigns.

5. Any term used in this Assurance that is explicitly defined by Indiana Code § 23-7-8-1 has the meaning set forth by that statute.

6. Respondent, in acting as a professional fundraiser consultant or soliciting charitable contributions, agrees to comply in all aspects with the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-1 et seq., including, but not limited to the following provisions:

a. Before acting as a professional fundraiser consultant or professional solicitor in the State of Indiana on behalf of any charitable organization, Respondent will register with the Indiana Attorney General's Consumer Protection Division.

b. Respondent will notify the Division in writing within 180 days of any change in the information contained in Respondent's registration.

c. Before acting as a professional solicitor or otherwise soliciting in the State of Indiana on behalf of any charitable organization, Respondent will enter into a written contract with the charitable organization for which it is soliciting and will file the contract with the Division. All such contracts will:

i. specify the percentage of gross contributions which the charitable organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable organization will receive. The amount that the charitable organization will receive will be expressed as a fixed percentage of the gross revenue or as a reasonable estimate of the percentage of the gross revenue. If a reasonable estimate is used, the contract must clearly disclose the assumptions or a formula upon which the estimate is based. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as

expenses of the solicitation campaign, including the cost of any merchandise or services sold; and

ii. disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from Respondent for the three (3) years preceding the year in which the contract is formed.

d. Before beginning a solicitation campaign in which Indiana residents will be solicited, Respondent will file a solicitation notice with the Division. The notice will include the following:

- i. a copy of Respondent's contract with the charitable organization;
- ii. the projected dates when soliciting will begin and end;
- iii. the location(s) and telephone number(s) from where solicitations will be conducted;
- iv. the name and residence address of each person responsible for directing and supervising the conduct of the campaign; and
- v. if the solicitation is one in which a bona fide police, law enforcement, rescue squad, or fire department has authorized the use of the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter", the solicitation notice will include a copy of the written authorization given by such bona fide organization for which Respondent is soliciting.

e. Not later than ninety (90) days after solicitation campaign has ended and not later than ninety (90) days after the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, Respondent will submit to the division a financial report containing the following information concerning the campaign:

i. the total gross amount of money raised by Respondent and the charitable organization from donors;

ii. the total amount of money paid to or retained by Respondent;

iii. the total amount of money, excluding the amount identified in paragraph 6.e.ii above, paid by the charitable organization as expenses as part of the solicitation campaign; and,

iv. the total amount of money received by the charitable organization after deducting the amounts identified in paragraphs 6.e.ii and 6.e.iii above.

f. Respondent will keep accurate fiscal records regarding its activities in Indiana, and will retain such records for at least three (3) years after the end of the period of registration to which they relate.

g. Respondent will not:

i. use the fact of registration as an endorsement by the State;

ii. misrepresent that Respondent is an officer or employee of a public safety agency;

iii. use the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter" in its solicitations unless a bona fide police, law enforcement, rescue squad, or fire department authorizes its use in writing;

iv. misrepresent to anyone that the contribution will be used for a charitable purpose if it has reason to believe the contribution will not be used for a charitable purpose;

v. misrepresent to anyone that another person endorses the solicitation unless that person has consented in writing to the use of the person's name for the purpose of

endorsing the solicitation;

vi. misrepresent to anyone that the contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation; or

vii. collect or attempt to collect a contribution in person or by means of a courier unless:

a. the solicitation is made in person and the collection or attempt to collect is made at the time of the solicitation; or

b. the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.

7. Respondent, in soliciting and/or contracting with consumers, agrees to comply in all aspects with Indiana Administrative Code, 11 IAC 3-1 et seq.

8. Respondent, in soliciting and/or contracting with consumers, agrees to comply in all aspects with the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq.

9. Within fourteen (14) days following court approval of this Assurance, Respondent agrees, pursuant to Ind. Code §23-7-8-2(d), to provide to the Division a copy of all solicitation contracts, not previously filed with the Division, that Respondent entered into with charitable organizations since January 1, 2004.

10. Within fourteen (14) days following court approval of this Assurance, Respondent agrees, pursuant to Ind. Code §23-7-8-2(e), to provide to the Division completed solicitation notices for all solicitation campaigns, not previously filed with the Division, that began after January 1, 2004.

11. Within fourteen (14) days following court approval of this Assurance, Respondent agrees, pursuant to Ind. Code §23-7-8-2(f), to provide an accurate and complete end-of-campaign financial report for the following campaign:

a. Respondent's campaign with World Wildlife Fund, which started on February 16, 2004 and ended January 31, 2005.

12. Respondent agrees that all information Respondent provides in response to paragraphs nine (9), ten (10), and eleven (11) will comply in all aspects with the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-1 et seq.

13. Upon execution of this Assurance, Respondent shall pay costs in the amount of Five Hundred and 00/100 Dollars (\$500.00) to the Office of the Attorney General.

14. In the event that Respondent violates Ind. Code § 23-7-8-2(f) on or after the date this Assurance is approved by the Circuit Court of Marion County, Respondent shall pay an agreed-upon stipulated penalty of One Hundred Dollars (\$100.00) for each month or part of a month that Respondent fails to file an accurate and complete financial report with the Division within the time period prescribed by Ind. Code § 23-7-8-2(f).

15. The stipulated penalty provision referenced in paragraph fifteen (15) shall be effective for a period of five (5) years from the date this Assurance is approved by the Circuit Court of Marion County.

16. Respondent agrees to make full payment of the stipulated penalty to the Office of Indiana Attorney General within thirty (30) days after being advised in writing by the Division of any violations of Ind. Code § 23-7-8-2(f). Any such payments will be deposited by the Division in the Consumer Fees and Settlements Fund.

17. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

18. Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

19. The Office of the Attorney General shall file this Assurance with the Circuit Court of Marion County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

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DATED this 24 day of May, 2006.

STATE OF INDIANA

RESPONDENT

STEVE CARTER
Attorney General of Indiana

EARTHtel, Inc.

by: Matt J. Light

Matt Light
Deputy Attorney General
Attorney No. 25680-53

by: Harris Mottley

Printed: Harris Mottley
Title: _____

Office of the Attorney General
Indiana Government Center South
5th floor
302 W. Washington Street
Indianapolis, IN 46204
(317) 232-4774

APPROVED, this _____ day of JUN 01 2006, 2006.

Theodore M. Soren

Judge, Marion County Circuit Court